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IN THE

Supreme Court of the United States

No.

JOHN F. GRAHAM,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

To the Honorable, the Chief Justice, and The Associate Justices of the Supreme Court of the United States.

The petitioner, *pro se*, respectfully petitions this Honorable Court to issue a writ of certiorari to review the judgment of the United States Court of Claims dismissing petitioner's claim for breach of contract and deprivation of his constitutional

rights, and, in support of his petition, petitioner does show the judgment of the United States Court of Claims dismissing petitioner's claim, which dismissal is dated October 20, 1972.

OPINION BELOW

Order

This case comes before the court on defendant's motion, filed May 30, 1972, to dismiss the petition for lack of jurisdiction. Upon consideration thereof, together with the opposition thereto, without oral argument, it is concluded that plaintiff's petition asserts a claim sounding in tort and therefore fails to state a claim within the jurisdiction of this court. [See *Jarosz v. United States*, 179 Ct. Cl. 927 (1967) and *Minnick v. United States*, 177 Ct. Cl. 1098 (1966).]

IT IS THEREFORE ORDERED that defendant's said motion to dismiss the petition be and the same is granted and the petition is dismissed.[1]

---

[1] In *Jarosz* the U.S. Court of Claims concluded that the petition amounted to a claim for damages for false imprisonment. In *Minnick* defendant moved to dismiss the petition on the ground that it was a suit for libel and the court concluded that the claim was not within its jurisdiction. In contrast to these two cases the petitioner's action is based on an implied contract with the United States, pursuant to 28 U.S.C. 1491:

(continued)

JURISDICTION

The jurisdiction of the Honorable Court to review by way of certiorari is based on United States Code, Title 28, Section 1255(1) and Section 2101(c), and Supreme Court Rules, Rule 19(1)(b) and 19(2).

QUESTIONS PRESENTED

1. Where it appears that a person was unlawfully committed to a hospital for the insane, is such person presumed to be sane or insane?

2. Where a person has not been adjudged insane by a court of proper jurisdiction but nonetheless is administered treatment for "mental illness," does such treatment imply a breach of contract between the hospital administering the treatment and the person receiving it?

STATEMENT OF THE CASE

This case arises from petitioner's commitment to St. Elizabeths Hospital by the D.C. Court of General Sessions on January 4, 1966. Petitioner had been arrested by agents of the F.B.I. on November 30, 1965, for an alleged violation of 18 U.S.C. 876 (mailing threatening communications.)

---

[1] (continued)

> The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

Also on November 30, 1965, petitioner was taken before a judge of the D.C. Court of General Sessions (one Harold H. Greene) who, ostensibly sitting as a committing magistrate, ordered petitioner committed to D.C. General Hospital for mental examination, pursuant to 24 D.C. Code 301(a), which statute gives authority only to *the court* (not a committing magistrate) to order such commitments. Petitioner remained at D.C. General Hospital until he was ordered committed to St. Elizabeths Hospital on January 4, 1966, by order of another judge of the D.C. Court of General Sessions (one Catherine B. Kelly). On February 24, 1966, which was three months after petitioner's arrest and imprisonment, petitioner was indicted for the alleged violation of 18 U.S.C. 876, and on March 17, 1966, petitioner was found competent by psychiatrists at St. Elizabeths Hospital to stand trial for the alleged offense. On May 23, 1966, petitioner was, six months after his arrest, arraigned in the United States District Court, and on that date, was ordered released from St. Elizabeths Hospital on his own recognizance. On October 19, 1966, the Government moved for a dismissal of the indictment.

On May 22, 1972, petitioner filed a claim with the United States Court of Claims. The cause of action had a two-pronged thrust: (1) that the United States Attorney had unlawfully and unconstitutionally caused petitioner to be committed to St. Elizabeths Hospital, and (2) that petitioner being sane, was wrongfully treated for mental illness in violation of an implied contract between petitioner and St. Elizabeths Hospital, the Superintendent of which has the "duty and responsibility to make certain that each patient is afforded *enlightened care and treatment.*"

In stating the cause of action as a breach of contract implied in fact petitioner relies on the following authorities:

1. In respect to St. Elizabeths Hospital, 10 Stat. 682 states:

> An Act to organize an Institution for the Insane of the Army and Navy, and of the District of Columbia, in said District. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the title of the institution shall be the Government Hospital for the Insane, and its objects shall be the most humane care and enlightened curative treatment of the insane of the army and navy of the United States, and of the District of Columbia.

2. In *Sturges v. Crowninshield,* 4 Wheat. (17 U.S.) 122 (1819), the Court said at 197:

> A contract is an agreement in which a party undertakes *to do, or not to do,* a particular thing. The law binds him to perform his undertaking, and this is, of course, the obligation of his contract. [Italics added.]

3. In *Charles River Bridge v. Warren Bridge,* 11 Pet. (36 U.S.) 419 (1837), the Court said at 572:

> A contract is defined to be an agreement between two or more persons to do or not to do a particular thing. The obligation of a contract is found by the terms of the agreement, sanctioned by moral and legal principles.

4. In *Chudnowski v. Eckels, et al.,* 232 Ill. 312, 83 N.E. 846 (1908), the Supreme Court of Illinois said at 847-848:

> Whether or not it accords with scientific terminology to call an obligation imposed by the existence of a duty an implied contract, yet in the ordinary use of language by courts and writers it has been almost universally called. "Implied contracts," says Blackstone, "are such as reason and justice dictate, and which, therefore, the law presumes that every man has contracted to perform, and upon this presumption makes him answerable to such persons as suffer by his performance." 3 Com. 158. * * * And among the instances of implied contracts are mentioned those of the common innkeeper to secure his guest's goods in his inn, of the common carrier to be answerable for goods he carries, and of the common farrier that he shoes a horse well without laming him. * * * * Hutchinson on Carriers (volume 3, §1403) says: "As in the case of common carriers of goods and merchandise, the carrier of passengers may be sued for an injury to the passenger by his negligence, *either in assumpsit, for breach of the contract,* whether express or implied, to carry safely, or in an action on the case for the wrong. [Italics added.]

5. In *Ward v. St. Vincent's Hospital*, 39 App. Div. 624, 57 N.Y.S. 784 (1899), where one Helen D. Ward had been injured by the negligence of a student nurse, the New York Supreme Court, Appellate Division, First Department, said at 784-785:

> The appellant contends that this action is brought to recover damages of the breach of an express contract whereby the defendant

agreed to furnish her a skilled, competent, and trained nurse. We see no reason to doubt the accuracy of that contention. Such an express contract is averred in the complaint; also, its breach, and damages resulting therefrom. The learned trial judge held that the action was exclusively in tort, and that the contract alleged was material only in the sense in which the payment of fare is material in an action for personal injuries by a passenger against a carrier. He thus held that the action was essentially for a breach of duty, and having reached the conclusion that no such breach of duty was proved, he directed a verdit for the defendant. It is not necessary, in our view of the gravamen of the complaint, to consider the correctness of the latter conclusion. While there are phrases in the complaint which refer to the defendant's duty, yet this duty is always predicated upon the express contract alleged. In one instance the plaintiff avers that, "pursuant to the terms of the contract," the defendant received the plaintiff in the hospital; in another, that "in consideration of the premises" (which embrace the contract), "the defendant undertook and contracted," etc.; in yet another, that, "by reason of the premises" (still the contract) "it became and was the duty of the defendant to furnish," etc.; and finally that, being in the hospital "under and in pursuance of said contract," the defendant negligently and unskillfully failed or omitted to furnish, etc. It is impossible to analyze this

> complaint without seeing that the breach of the defendant's contract is, throughout, the gravamen of the action. The plaintiff even alleges, as in an ordinary action upon contract, that "she has complied with all the terms and conditions of said contract, and has fully discharged all her duties and liabilities thereunder." Treating the phrases suggestive of a duty most favorably to the defendant, we still have an action founded upon the contract. As was said in *Bank v. Brown*, 3 Wend. 161:
>
> > If plaintiff states the custom, and also relies on an undertaking, general or special, then the action may be said to be *ex delicto quasi ex contractu;* but in reality it is founded on contract, and to be treated as such.[2]

6. In *Matusow, et al. v. Camp Orinsekwa*, 155 Misc. 452, 280 N.Y.S. 626 (1935), where a camper was injured as a result of the camp's negligence, the New York Supreme Court said at 628:

---

[2] While at St. Elizabeths Hospital petitioner complied with all the terms and conditions of an involuntary patient at said hospital. The hospital's clinical records in respect to petitioner contain such sentences as "He is quite cooperative with the examination and does not appear to be either acutely or chronically ill" (January 4, 1966), and "he has been quite respected by the rest of the population on the ward as he has never refused any ward assignments, or any assignments whatsoever, and has also participated in the ward activities" (February 10, 1966). Another clinical record, also dated February 10, 1966, said of petitioner: "He is precisely oriented and responsive to his environment. He appears to have a higher than average intellectual endowment as demonstrated by conversation, interest, and cognant and apperceptive functions. He shows a clear sensorium with no cognitive defects."

> Upon the trial, evidence was received tending to show negligence in the operation of the camp, but such acts do not change the character or substance of the cause of action instituted by the plaintiffs. Negligence, considered merely as a tort, is a wrong independent of contract, but negligence may also be a breach of contract *if the contract itself calls for care.* [Cases cited.]
>
> The fact that Jack Matsuow was injured by the alleged negligence of the defendant drew into the case the question of negligence, which in turn brought in the relationship of the parties to each other and *the failure of due care.* All the facts and circumstances bearing on that question were presented to the jury and were within the issues; if plaintiffs were entitled to succeed, they would have been entitled to the same damages as though the action had been for negligence. [Cases cited.] [Italics added.]

7. In *Busch v. Interborough Rapid Transit Co.*, 187 N.Y. 388, 80 N.E. 197 (1907), the Court of Appeals of the State of New York said at 198:

> *It is no bar or answer to the claim of an action in contract that one in tort might have been, and ordinarily would be, brought for the acts really complained of.* The dividing line between breaches of contract and torts is often dim and uncertain. There is no definition of either class of defaults which is universally accurate or acceptable. In a

> general way a tort is distinguished from a breach of contract in that the latter arises *under an agreement of the parties,* whereas the tort ordinarily is a violation of a duty fixed by law, independent of contract or the will of the parties, although it may sometimes have relation to obligations growing out of or coincident with a contract, and *frequently the same facts will sustain either class of action.* [Cases cited.] [Italics added.]

In stating a cause of action for a violation of his constitutional rights, petitioner relies on the Fifth Amendment: ("No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a Grand Jury * * * nor be deprived of life, liberty, or property without due process of law"); on the Sixth Amendment: ("In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed"); on the Eighth Amendment: ("Excessive bail shall not be imposed * * * nor cruel and unusual punishment inflicted"), and the Fourteenth Amendment: ("No State shall *** deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws").

By being involuntarily detained in, successively, D.C. General Hospital and St. Elizabeths Hospital for three months prior to indictment, petitioner was denied a speedy trial;

By being committed to a hospital for the insane without a showing in a court of proper jurisdiction that petitioner was insane or that there was probable cause to

believe that a crime had been committed and petitioner had committed it, petitioner was subjected to cruel and unusual punishment;

By being ordered committed to St. Elizabeths Hospital pursuant to 24 D.C. Code 301(a), when the proper statute for such commitments in cases of federal offenses is 18 U.S.C. 4244, petitioner was deprived of liberty and property without due process of law and the equal protection of the laws.

The transcript of a competency hearing in the D.C. Court of General Sessions which led to petitioner's commitment to St. Elizabeths Hospital indicates that, by laying the foundation for petitioner's acquittal by reason of insanity rather than attempting to secure his conviction, an Assistant U.S. Attorney (one Robert K. Webster) prevented petitioner's speedy trial in the U.S. District Court, which act was a violation of 18 U.S.C. 3:

> Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact. Except as otherwise expressly provided by an Act of Congress, an accessory after the fact shall be imprisoned not more than one-half the maximum term of imprisonment or fined not more than one-half the maximum fine prescribed for the punishment of the principal, or both; or if the principal is punishable by death, the accessory shall be imprisoned not more than ten years.

Petitioner avers that, in ordering petitioner committed, successively, to D.C. General Hospital and St. Elizabeths Hospital, the judges of the D.C. Court of General Sessions cooperated with the Assistant U.S. Attorney to the extent that they made themselves indictable pursuant to 18 U.S.C. 2 and 18 U.S.C. 241.[3] In short, petitioner avers that he was committed to St. Elizabeths Hospital by the criminal act of an Assistant U.S. Attorney and the collusion of judges of the D.C. Court of General Sessions.

---

[3] **18 U.S.C. 2:** (a) Whoever commits an offense against the United States or aids, abets, conceals, commands, induces or procures its commission, is punishable as a principal; (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

18 U.S.C. 241: If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution of the United States, or because of his having so exercised the same; * * * They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.

CONCLUSION

It is the petitioner's position that the principals involved in petitioner's commitment to St. Elizabeths Hospital were experienced and knowledgeable lawyers and, therefore, petitioner's unlawful commitment to St. Elizabeths Hospital cannot be construed as a "mistake." It is also petitioner's position that the unlawfulness of petitioner's commitment to St. Elizabeths Hospital has been common knowledge within the U.S. Department of Justice for seven years, and that past attempts to conceal the unlawfulness of petitioner's commitment to St. Elizabeths Hospital manifest corruption within the Federal Establishment from top to bottom. Thus the primary question is whether petitioner, in being unlawfully committed to St. Elizabeths Hospital, could be considered insane, and the second question is whether, if petitioner was sane, the hospital's treatment of petitioner for a mental disease or defect or other mental illness was a breach of contract implied in fact between St. Elizabeths Hospital and the petitioner.

JOHN F. GRAHAM

2022 Columbia Road, N.W.
Washington, D.C.

Pro se

APPENDIX A

UNITED STATES COURT OF CLAIMS

JOHN F. GRAHAM

v.

UNITED STATES OF AMERICA

No. 207-72

[Filed May 22, 1972]

Before COWEN, *Chief Judge*, DAVIS, SKELTON, NICHOLS, KASHIWA, KUNZIG and BENNETT, *Judges*.

ORDER

This case comes before the court on defendant's motion, filed May 30, 1972, to dismiss the petition for lack of jurisdiction. Upon consideration thereof, together with the opposition thereto, without oral argument, it is concluded that plaintiff's petition asserts a claim sounding in tort and therefore fails to state a claim within the jurisdiction of this court. [See *Jarosz v. United States*, 179 Ct. Cl. 927 (1967) and *Minnick v. United States*, 177 Ct. Cl. 1098 (1966).]

IT IS THEREFORE ORDERED that defendant's said motion to dismiss the petition be and the same is granted and the petition is dismissed.

BY THE COURT

Oct 20, 1972 Chief Judge

APPENDIX B

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

UNITED STATES CONSTITUTION

Fifth Amendment: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Sixth Amendment: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; and to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

Eighth Amendment: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Fourteenth Amendment, Section 1. All persons born or naturalized in the United States, and subject to

the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

UNITED STATES CODE

18 U.S.C. 4244: Whenever after arrest and prior to the period of probation the United States Attorney has reasonable cause to believe that a person charged with an offense against the United States may be presently insane or otherwise so mentally incompetent as to be unable to understand the proceedings against him or properly to assist in his own defense, he shall file a motion for a judicial determination of such mental competency to the accused, setting forth the ground for such belief with the trial court in which proceedings are pending. * * *

DISTRICT OF COLUMBIA CODE

24 D.C. Code 301(a): Whenever a person is arrested, indicted, charged by information, or is charged in the juvenile court of the District of Columbia, for or with an offense and, prior to the imposition of sentence or prior to the expiration of any period of probation, it shall appear to the court from the court's own observations, or from prima facie evidence submitted to the court, that the accused is of unsound mind or is mentally incompetent

so as to be unable to understand the proceedings against him or properly to assist in his own defense, the court may order the accused committed to the District of Columbia General Hospital or other mental hospital designated by the court, for such reasonable period as the court may determine for examination and observation and for care and treatment if such is necessary by the psychiatric staff of said hospital. If, after such examination and observation, the superintendent of the hospital, in the case of a mental hospital, or the chief psychiatrist of the District of Columbia General Hospital, in the case of District of Columbia General Hospital, shall report that in his opinion the accused is of unsound mind or mentally incompetent such report shall be sufficient to authorize the court to commit by order the accused to a hospital for the mentally ill unless the accused or the Government objects, in which event, the court, after a hearing without a jury, shall make a judicial determination of the competency of the accused to stand trial. If the court shall find the accused to be then of unsound mind or mentally incompetent to stand trial, the court shall order the accused confined in a hospital for the mentally ill. [Revised since petitioner's arrest in 1965.]

In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1006

JOHN F. GRAHAM, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

In this case petitioner seeks review of the decision of the Court of Claims rejecting his claim as sounding in tort and thus as outside the jurisdiction of the court.

1. Petitioner alleges that in November 1965, he was arrested by the F.B.I. for allegedly mailing threatening communications in violation of 18 U.S.C. 876 (Pet. 3). Later the same day, pursuant to 24 D.C. Code 301 (a), he was committed to D.C. General Hospital for examination. After a hearing in which two D.C. General Hospital psychiatrists testified that he was psychotic, he was committed to St. Elizabeths Hospital, apparently as incompetent to stand trial. He was sub-

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sequently indicted under 18 U.S.C. 876 and was found competent to stand trial. Two months later he was released from St. Elizabeths, arraigned in the United States District Court, and released on his own recognizance. Approximately five months thereafter the United States dismissed the indictment (Pet. 4).

Petitioner filed suit in the Court of Claims, seeking damages of $425,000.00. He alleged that he was unlawfully committed to St. Elizabeths Hospital (Ct. Cl. Pet. 1, para. 2);[1] that his reputation was damaged thereby (Ct. Cl. Pet. 2 para. 4); and that the government had broken its implied contract to provide him with proper care. The Court of Claims dismissed the petition for lack of jurisdiction.

2. The decision of the Court of Claims is correct and further review is not warranted. The Court of Claims has no jurisdiction over tort claims. *Schillinger* v. *United States*, 155 U.S. 163; *Klebe* v. *United States*, 263 U.S. 188; *Hill* v. *United States*, 149 U.S. 593; *German Bank of Memphis* v. *United States*, 148 U.S. 573. Petitioner's claims—false imprisonment, defamation and negligence—are all such claims.[2] The Court of Claims has held that claims alleging illegal and improper confinement in a mental hospital,[3] in-

---

[1] "Ct. Cl. Pet." refers to the petition in the Court of Claims, a copy of which we are lodging with the Clerk.

[2] See Prosser, *Law of Torts*, 4th ed. (1971); Chapter 2, sec. 11 (false imprisonment); Chapter 19 (defamation); Chapter 5 (negligence).

[3] *Grayson* v. *United States*, 141 Ct. Cl. 866; *Jarosz* v. *United States*, 179 Ct. Cl. 927.

jury to reputation,[4] and negligent treatment in a public hospital,[5] are all tort claims and as such are beyond its jurisdiction.

Petitioner's formulation of one of his claims as involving a breach of the government's implied contract to provide him with proper care in the hospital cannot, in the context of the jurisdictional requirements of the Court of Claims, change the nature of the claim from tort to contract. See *Hill* v. *United States, supra,* 149 U.S. at 598.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

FEBRUARY 1973.

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[4] *Algonac Manufacturing Co.* v. *United States*, 428 F. 2d 1241 (Ct. Cl.); *Minnick* v. *United States*, 177 Ct. Cl. 1098; *Bornhoft* v. *United States*, 137 Ct. Cl. 134.

[5] *Jarosz* v. *United States*, 179 Ct. Cl. 927; *Norcutt* v. *United States*, 60 F. Supp. 226 (Ct. Cl.).

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MICHAEL RODAK, JR.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1006

JOHN F. GRAHAM,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Claims

REPLY BRIEF OF PETITIONER

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Respondent.

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---

REPLY BRIEF OF PETITIONER

In its "Memorandum for the United States in Opposition" respondent contends that the United States Court of Claims was correct when it dismissed petitioner's suit against the United States on the ground that petitioner's suit was an action in tort and therefore beyond the jurisdiction of the Court of Claims. Respondent, however, does not appear to deny that respondent acted unconstitutionally in causing petitioner to be committed to St. Elizabeths Hospital as a person of unsound mind.

Contrary to what respondent implies, petitioner is not asking damages for false imprisonment, defamation and/or negligence. Petitioner's suit against respondent is an action in contract, the gravamen of the case being that St. Elizabeths Hospital failed to give petitioner enlightened care and treatment which, under a contract implied in fact, it was bound to do. The provisions of this contract are stated in 10 Stat. 682 (see petitioner's "Petition for a Writ of Certiorari," p. 5), and in the affidavit of Dale C. Cameron, M.D., superintendent of St. Elizabeths Hospital, dated July 11, 1967, which affidavit stated in respect to petitioner:

> In my capacity of Superintendent of Saint Elizabeths Hospital it is my duty and responsibility to make certain that each patient is afforded enlightened care and treatment.

It would therefore appear that, where a person committed to St. Elizabeths Hospital sues for the failure of the hospital to provide enlightened care and treatment, the suit is a valid action in contract.

In its "Memorandum in Opposition" respondent states:

> The Court of Claims has held that claims alleging illegal and improper confinement in a mental hospital, injury to reputation, and negligent treatment in a public hospital, are all tort claims and as such are beyond its jurisdiction.

In support of its position respondent cites *Grayson v. United States*, 141 Ct. Cl. 866; *Jarosz v. United States*, 179 Ct. Cl. 927; *Algonac Manufacturing Co. v. United States*, 428 F.2d 1241 (Ct. Cl.); *Minnick v. United States*,

177 Ct. Cl. 1098; *Bornhoft v. United States*, 137 Ct. Cl. 134, and *Norcutt v. United States*, 60 F. Supp. 266 (Ct. Cl.). *Grayson* and *Jarosz* pertain to illegal and improper confinement in a mental hospital; *Algonac*, *Minnick* and *Bornhoft* pertain to injury of reputation, and *Jarosz* and *Norcutt* pertain to negligent treatment in a public hospital. These cases, however, are immaterial to petitioner's case.

The thrust of petitioner's case is that he was of sound mind when he was committed to St. Elizabeths Hospital on January 4, 1966, and continued to be of sound mind unitl he was discharged from the said hospital on May 23, 1966. Petitioner was recommended for discharge from the hospital by the hospital's staff psychiatrists on March 17, 1966, but the hospital admits to administering 20 hours of therapy to petitioner during April and May, 1966; that is, for two months *after* petitioner had been recommended for discharge.

It is petitioner's contention that where a person is not, or ceases to be, a fit subject for confinement in a mental hospital, *any* treatment for a mental condition is in violation of the hospital's contract to provide such person with enlightened care and treatment. Petitioner further contends that involuntary psychiatric treatment administered to a person of sound mind is *brainwashing*, not therapy, and that, if the courts do not make this distinction, the Government has the license to subject any person by whom it is offended to psychiatric treatment, no matter what the person's mental condition may be. Indeed, that day may not be far off, for Government prosecutors, aware of the federal judiciary's faith in the occult, have long since learned to exploit judicial credulity. Under our system of jurisprudence arbitrary imprisonment,

physical torture and homicide are constitutionally acceptable, provided that it is emphasized the victim is receiving *treatment*; under our system of jurisprudence the Rule of Law has been replaced by the Rule of Magic, and its justification is psychiatry.

In the genre of the occult, psychiatry is the American counterpart of voodoo. (See *The Mind Game: Witchdoctors and Psychiatry*, E. Fuller Torrey, M.D., New York: 1972.) Unlike voodoo, however, psychiatry is well organized. In the American Psychiatric Association it has its Sanhedrin; its stock in trade is "mental illness."

Although no one can define mental illness, the term is sufficiently esoteric to frighten the bravest of men. Confronted by mental illness, a learned jurist becomes like a schoolboy walking alone through a night-enshrouded graveyard. No schoolboy will admit that he believes in ghosts, and no jurist will admit that the mentally ill are possessed by evil spirits, or that psychiatrists are the exorcists. But one never knows for sure, and it's the better part of valor to stay on the psychiatrists' good side – just in case.

One learned jurist who has proclaimed himself the friend of psychiatry's wizards is Mr. Justice Douglas. In *Robinson v. California*, 370 U.S. 660, 676 *et seq.*, he said in respect to drug addicts:

> The addict is a sick person. He may, of course, be confined for treatment for the protection of society. Cruel and unusual punishment results not from confinement but from convicting the addict of a crime. *** A prosecution for addiction, with its resulting stigma and irreparable damage to the good name of the

> accused, cannot be justified as a means of protecting society, where a civil commitment would do as well. *** We would forget the teachings of the Eighth Amendment if we allowed sickness to be made a crime and permitted sick people to be punished for being sick. This age of enlightenment cannot tolerate such barbarous action.[1]

Not far behind Mr. Justice Douglas is Mr. Chief Justice Burger. In an article, "Psychiatrists, Lawyers and the Courts," *Federal Probation*, June 1964, at p. 9, he proposed that, after a jury had found the accused guilty, psychiatrists would meet (presumably *in camera*) to decide whether or not the accused was mentally ill. He said:

> Under such a system the "guilty" defendant could be committed by the trial judge to the custody of the government for an indeterminate period for such medical treatment, psychiatric therapy, discipline, and vocational training as would help him and rehabilitate and restore him to a useful life. He would remain in custody until he was determined to

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[1] Mr. Justice Douglas appears to lack a fundamental grasp of criminal law. There is a vast difference between an illness induced by circumstances over which the person afflicted has no control and an illness which is self-induced. If it is an offense against the State to induce a drug addiction in another person it is no less an offense to induce a drug addiction in oneself. Whether or not a drug addict is sick (and the proposition that drug addiction is a "sickness" is certainly questionable) the person with a self-induced drug addiction is culpable, morally and legally, for the burden he has imposed on the State.

> be sufficiently improved so that it was reasonably certain his release would not be dangerous to society or to himself. Some will protest this might mean a life sentence. The answer to this is that society's protection and the defendant's own welfare outweighs his right to absolute freedom.

For a jurist, sworn to uphold the Constitution, to make a proposal such as that made by the Chief Justice is astonishing; it is doubly astonishing when he acknowledges in the very same article that some, if not all, psychiatrists are liars. At. p. 7 the Chief Justice wrote:

> I have heard psychiatrists frankly say that if they conclude that their patient is ill and in need of treatment, they consider it their professional obligation to try to make certain that he goes to a mental institution rather than a prison, even if it is necessary to "tailor" their expert testimony to accomplish that end. *** I have seen far too many cases in which the psychiatric testimony, when carefully analyzed, developed somewhat along these lines: the patient (and of course he is primarily a patient to the examining psychiatrist) is assumed to have committed the stated antisocial acts; such acts are symptoms of emotional disturbance or mental disorder; ergo the patient has a mental disorder.[2]

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[2]The Chief Justice is not to be faulted for his adherence to the Rule of Magic. Sir Matthew Hale, one of England's greatest jurists, and Sir Thomas Browne, one of England's most famous physicians, believed in witchcraft; it is not unreasonable, therefore, that in our own age eminent men would place their faith in psychiatry.

If psychiatrists will lie to get a person committed to a mental hospital the probability is that they will lie to keep him there. And since, under our system of jurisprudence, it is sacrilege to question psychiatric infallibility, the psychiatrists can, with no fear of criticism, keep their "patient" in solitary confinement, beat him, electrocute him, and occasionally kill him.

Mental patients under treatment die at a flagrant rate, but evidently in the judicial view it is better that a mental patient find salvation through death than to be possessed. (At the beginning of fiscal 1972 there were 313,012 resident patients in the nation's state and county mental hospitals; at the end of the year 23,282, or 7.43%, had died. The national rate of death in relation to population is 0.93%.) In *Prisoners of Psychiatry*, New York: 1972, p. 41 *et seq.*, Bruce J. Ennis says:

> In my year and a half with the Civil Liberties Union, I had heard or seen ample evidence of cruel, even fatal, mistreatment in mental hospitals. I knew that mental patients were often beaten senseless by drunk or vicious attendants. *** I knew of one obstreperous patient who was first strapped to her bed by five attendants and who then had a wet pillowcase put over her head until she ceased to struggle. True, the attendants did not mean to kill her. The hospital director told the county medical examiner, "We would be satisfied with a report of death by exhaustion."

At p. 102 *et seq.* Ennis describes his tour of Bryce State Hospital in Tuscaloosa, Alabama:

> Three of the ward's patients had been locked in nine-by-nine-foot solitary isolation cells for

> eleven days for trying to escape. Each of these cells had a ceiling light bulb, and a mattress and bedding on the floor (no bed frame) – nothing more. The cells, which had no toilets or sinks, gave off an overpowering smell of urine. *** My escort admitted that the three were locked in isolation not as therapy but as punishment. I asked when they would be released, and he replied that the hospital would "try to review the cases sometime during the next week." But he admitted that they could be held in solitary for weeks, or even months.

Psychiatric treatment of the mentally ill at St. Elizabeths Hospital was described in the *Washington Post*, July 17, 1972, p. C-3

> There are those whose work at John Howard [the St. Elizabeths maximum security unit] has convinced them that the facility offers little in the way of patient therapy. "It used to be a victory for a lawyer to get his client off by pleading insanity," said one attorney who works with the hospital branch of the Public Defenders Service. "But now a district attorney feels he's gotten his pound of flesh if he gets you into the hospital. Some of those patients – particularly those charged with misdemeanors – are winding up at John Howard for longer than if they had been convicted and served their sentence." *** For the very assaultive patients there are tranquilizing drugs and, if all else fails, the seclusion room, where patients are locked in a small 4-foot by 7-foot rectangular area containing just a bare mattress. They

> have to be escorted to the bathroom. Sometimes, unusually combative patients get what is known as "special treatment." This means they are handcuffed and often put in leg chains and then confined in a seclusion room where they can have no visitors until their behavior improves.

Where other methods of exorcism seem inadequate, psychiatrists rely on electric convulsive therapy. This treatment, as it was administered to one hapless sinner in a private mental hospital in the Midwest, was described in an article by Elizabeth Wertz in the *Potomac* section of the *Washington Post*, December 10, 1972, p. 36 *et seq.*:

> She tried to "be good," so that she would get out of the hospital. The only way she knew to be on her good behavior was to behave the same way she would at a dinner party she did not want to attend but felt she should for her husband's sake. *** Stand up straight, smile, and be interested in the other person. *** Torn between her terror of the treatments and her feelings for her husband, she really didn't like herself when she broke down and told me about her fears. *** She asked her husband, very politely, to discontinue the shock treatments. She asked the chief of the clinic, too. They pretended not to hear her. Anne no longer owned her body, her head, or her own soul. She had no voice at all in what happened to her. *** Morning. Breakfast came for me and none for Anne. This is the signal that one is going to get a treatment, no breakfast. Anne

was white. She had no expression at all. Outside the room, everything was bustle and busyness. *** When the treatments were over that day, everything was quiet again. The psychiatrists were gone, the attendants were gone. The hall was nearly empty. All that remained to show for the morning's great burst of energy was a corpse, wrapped in a sheet, lying on a high cart. It was Anne. Alone she had gone to her treatment, to her death.

Respectfully submitted,

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